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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,416	04/12/2004	Matthew R. Selmon	LUM 5004 USCNT3	3249
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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
GRAY, PHILLIP A				
ART UNIT		PAPER NUMBER		
3767				
NOTIFICATION DATE		DELIVERY MODE		
01/25/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/823,416

Applicant(s)

SELMON ET AL.

Examiner

Phillip Gray

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 6, 9, 15-18, 22-24 and 27-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-14, 19-21, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to applicant's communication of 9/30/2009. Claims 1-58 are pending. Claims 1-5, 7,8, 10-14, 19-21, 25-26 are elected and are rejected below, claims 6, 9, 15-18, 22-24, and 27-58 are withdrawn as drawn to a nonelected invention.

Election/Restrictions

Applicant's election of Species G and claims 1-5, 7,8, 10-14, 19-21, 25-26 in the reply filed on 9/30/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claims 6, 9, 15-18, 22-24, and 27-58 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/30/2009.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

"...wherein a distal end of the **catheter body** assumes one of a first and a second configuration when the working element is proximally retracted into the catheter body." Is not shown as a valid structural cooperative relationship in the specification or in the elected species of figure 7-10b. Examiner believes that applicant meant that the working element assumes a first or second configuration, as shown in applicants figure 8-9. It is recommended that applicant amend the claims to clarify this structural cooperative relationship. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7,8, 10-14, 19-21, 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Makower et al. (U.S. 6,190,353). Makower discloses a method and

apparatus for bypassing arterial obstruction and performing other transvascular procedures with a system comprising a catheter body (100) including a lumen configured to track over a guide wire (see figure 2a), catheter end piece with port (note in figure 2a where 102 exits from 100), a working element having a distal end configured to deploy through the port (see 102), and configured to assume a first straight configuration and a second curved configuration (see figure 6a-6e). Concerning claim 4 note lumen of 100 is uniform in diameter as shown in figures. Concerning claim 5, 7, and 8 note working element cannula 102 in figure 2a and GW2 guidewire. Concerning claim 6, 22 and braid see paragraph [00149]. Concerning claim 10-12 see figure 2a and distal first port where GW1 leaves the catheter body and second port where element 102 leaves catheter body 100. Concerning claim 13 see at 114 and concerning claim 14 see GW1 or GW2 in figure 2a. Concerning claim 19 and deflection mechanism see figures 6d-6e. Concerning claim 20-21, see figures 1c, 2a, and 3a-3f. Concerning claim 25-26 see column 46 lines 51-65 concerning handpiece 706 and 710.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phillip Gray/
Examiner, Art Unit 3767
/Kevin C. Simons/
Supervisory Patent Examiner, Art Unit 3767